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NO.

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JUL 23 1984

IN THE  
SUPREME COURT OF THE UNITED STATES

ALEXANDER L STEVAS,  
CLERK

OCTOBER TERM 1984

JOHN CHARLES FRANTA

Petitioner,

versus

STATE OF FLORIDA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE FLORIDA SECOND DISTRICT  
COURT OF APPEAL

---

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QUESTION PRESENTED FOR REVIEW

WHETHER THE DECISION BELOW,  
AFFIRMING WITHOUT OPINION  
PETITIONER'S CONVICTIONS FOR THEFT  
AND ENGAGING IN A SCHEME TO DEFRAUD,  
IS CONTRARY TO LAW AND RESULTS IN A  
DEPRIVATION OF HIS CONSTITUTIONAL  
RIGHT TO DUE PROCESS, WHERE THE  
EVIDENCE ESTABLISHED ONLY THAT  
PETITIONER WAS INVOLVED IN THE  
COMPETITIVE BUSINESS OF HOME REPAIR  
SOLICITATION, THAT HE ENGAGED IN  
LEGITIMATE SALES PUFFERY, BUT THAT  
HE DID NOT ACT TO DEFRAUD ANY  
HOMEOWNERS?



LIST OF INTERESTED PERSONS

The only persons having an interest in the outcome of this case are the Petitioner, his family and the State of Florida.



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PETITION FOR A WRIT OF CERTIORARI  
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Petitioner, JOHN CHARLES FRANTA, respectfully prays that a Writ of Certiorari issue to review the judgment, opinion, and order on rehearing of the Florida Second District Court of Appeal entered in Case No. 83-678, which affirmed the criminal convictions and sentences of the Circuit Court of the Sixth Judicial Circuit of Florida.



Franta v. State, 450 So.2d 495 (Fla. 2d DCA 1984).

OPINIONS BELOW

The opinion of the Florida Second District Court of Appeal, entered April 11, 1984, is reported as Franta v. State, 450 So.2d 495 (Fla. 2d DCA 1984). This decision is reproduced in the Appendix to this petition. That same court denied rehearing on May 18, 1984. That order is contained in the Appendix. The trial court did not render any written opinions specifically directed to the question presented in this certiorari petition.



**JURISDICTION**

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1257(3).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**U.S. Constitution, Amendment V:**

No person shall. . . be deprived of life, liberty, or property without due process of law. . .

**U.S. Constitution, Amendment XIV:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.



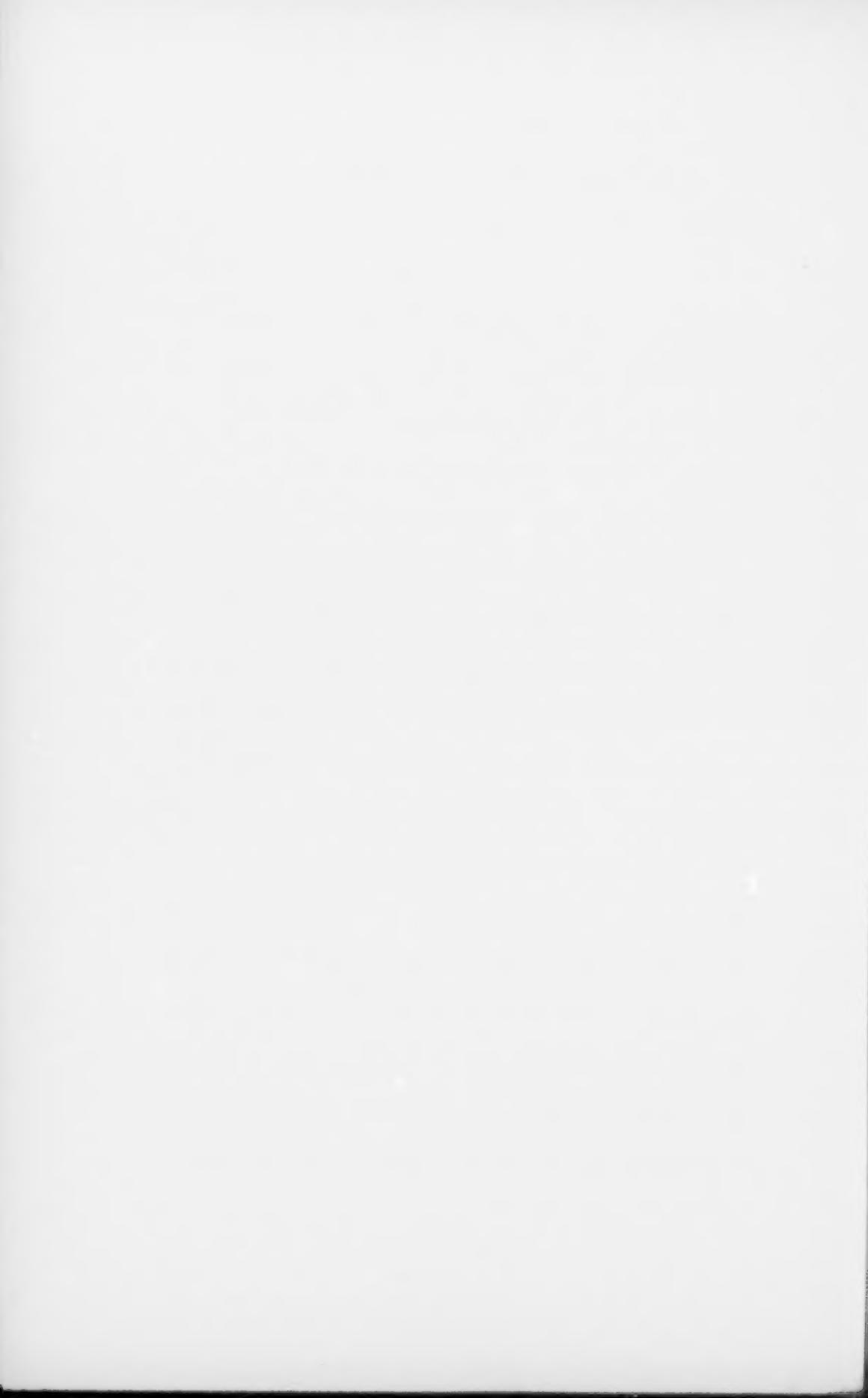
STATEMENT OF THE CASE

The State Attorney for the Sixth Judicial Circuit, in and for Pinellas County, Florida, returned a fifteen-count information charging JOHN CHARLES FRANTA and three others with engaging in a scheme to defraud ten or more persons, and grand theft. A jury trial commenced on February 28, 1983. During the course of the trial, the court dismissed the charges alleged in counts 11, 14 and 15 due to inadequate evidence. The jury returned guilty verdicts as to the remaining twelve charges. The trial court punished FRANTA by imposing a three-year term of incarceration on count 1 followed by concurrent terms of five years' probation on the remaining counts. The court further ordered FRANTA to pay a total fine of \$5500. Petitioner sought appellate review in the Florida Second Dis-



trict Court of Appeal, wherein he raised four issues, to wit: insufficiency of the evidence, unconstitutionality of the charging statute, improper admission of collateral act evidence, and erroneous jury instructions. The District Court affirmed the convictions.

As presented at trial, this case involved allegations of consumer fraud. The evidence was intended to show that JOHN CHARLES FRANTA and several other persons engaged in a plan or scheme constituting a systematic ongoing course of conduct to defraud homeowners by inducing them to enter into contractual arrangements for unnecessary roof repairs. Petitioner's allegedly criminal conduct grew out of the operation of the Dennis E. Rodriguez Construction Company, a business organized and licensed for the purpose of providing roof repair services to home-



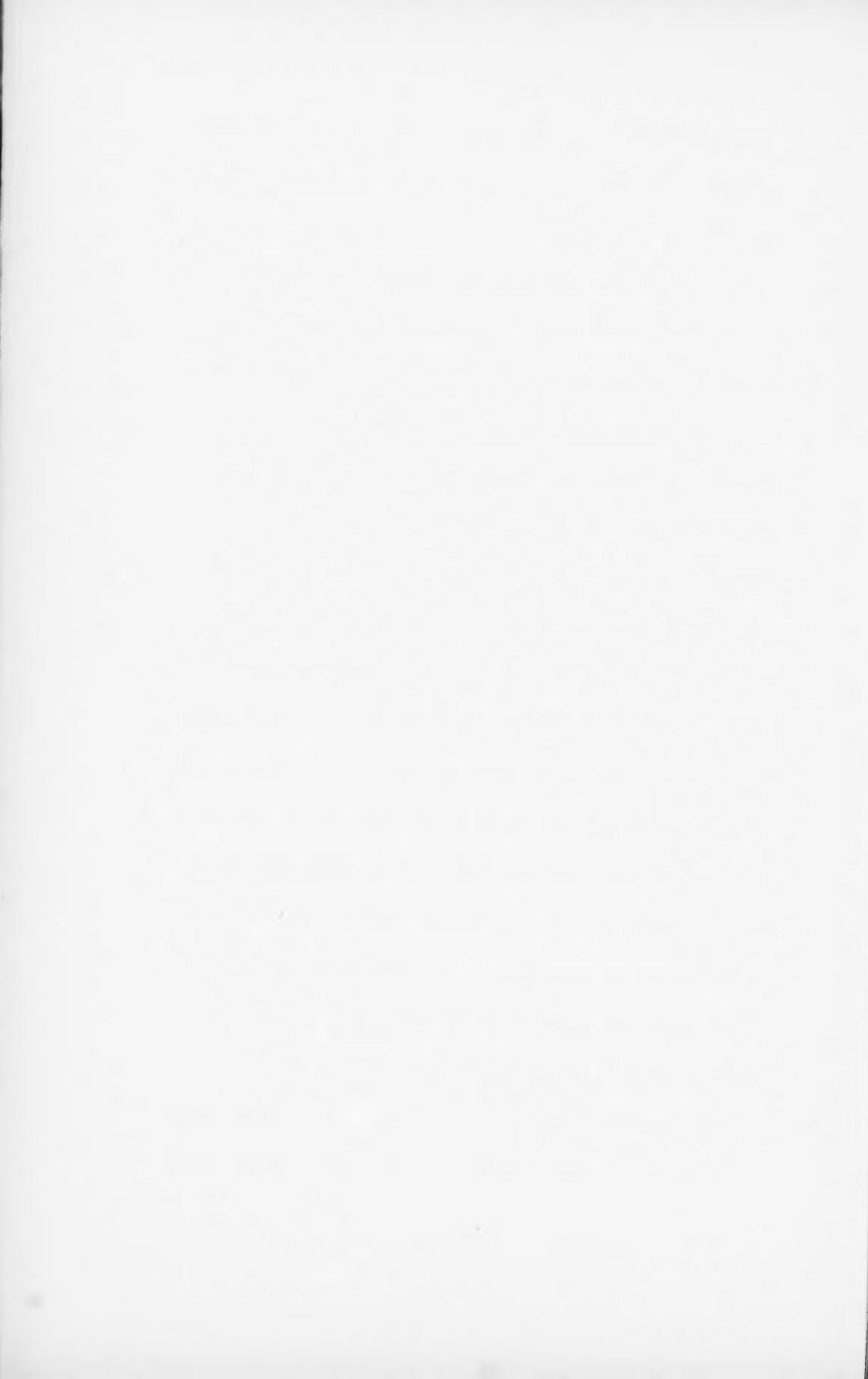
owners in Pinellas County, Florida. Prospective customers were solicited by either telephone or home canvassers. The initial contact was intended to arrange a pressure cleaning of the homeowners' roofs. In many instances, this solicitation led to contracts for roof repairs. The basic factual contention at trial centered on the necessity for the repairs and the manner in which the repairs were effected.

The home repair business was actually owned by Dennis E. Rodriguez, who held a class C construction license. Petitioner, known to Rodriguez as a "super" salesman from prior construction business, became associated with Rodriguez in late 1981, and was supposed to assist in increasing the company business. Petitioner was to be responsible for sales, while Rodriguez was in charge of overseeing the home



improvement construction activities, which primarily involved roofing repairs.

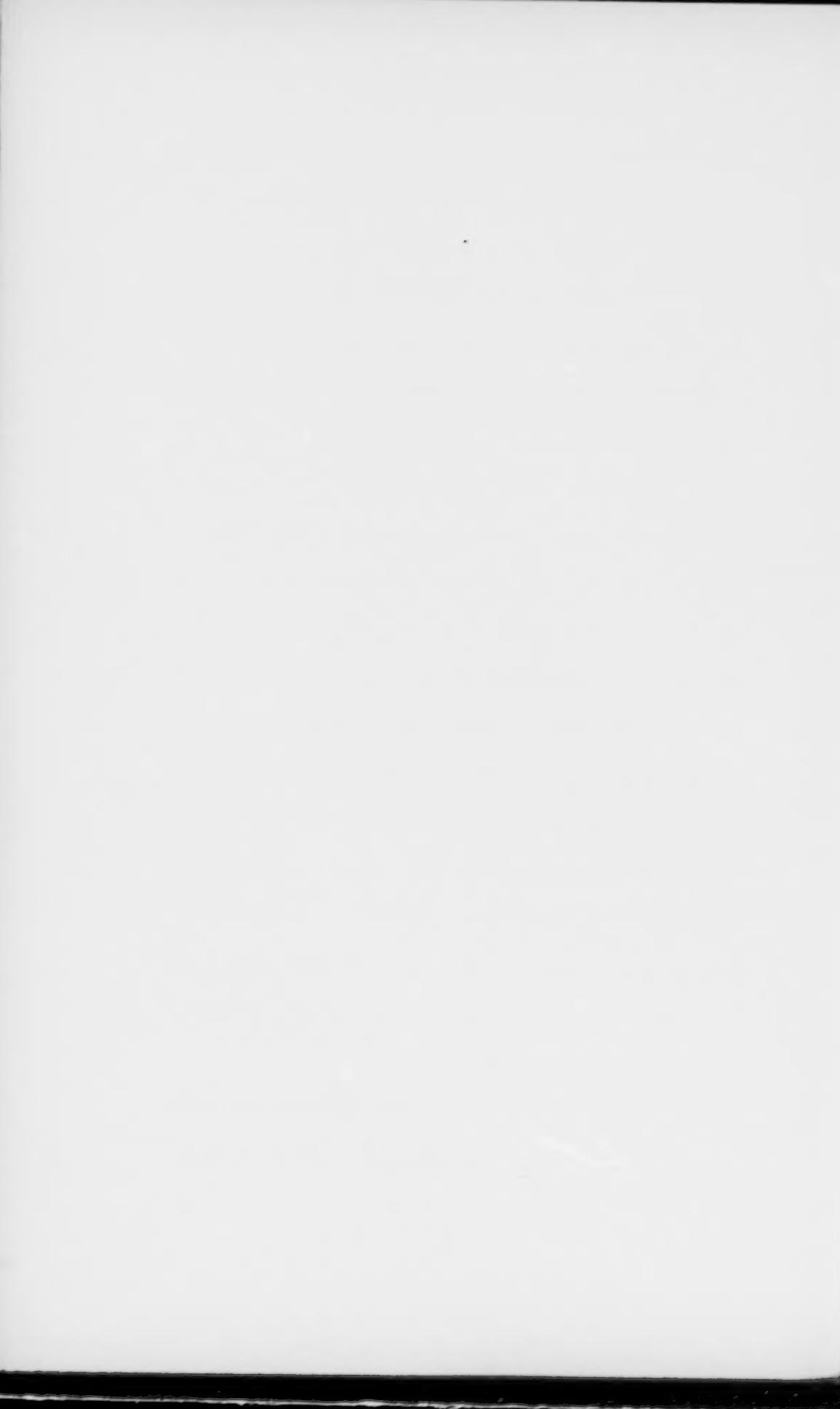
In order to secure business, the company utilized canvassers and solicitations for roof cleanings. The canvassers and roof cleaners, who were paid either a flat fee per job or a percentage of any future roof repair job sold, looked for dirty roofs and homes in need of roof repairs. If the homeowner agreed to a pressure cleaning of the roof and home exterior, a contract was entered into for a fee. In the case of a roof that appeared in need of repairs, such as loose and mildewed tiles or leaks, the canvassers and roof cleaners contacted a company salesman who then attempted to solicit the homeowner for a second job to repair the roof. In the event that nothing was wrong with the roof or the homeowner did



not desire any repair work, the company would perform the cleaning only or refund the money as requested.

The majority of the initial solicitations led to contracts for roof repairs. Most customers were elderly people. In order to secure a roof repair sale, it was common for the salesmen to dramatize and stress the importance of an existing problem with the roof. No salesperson, however, was ever advised by FRANTA or anyone else to lie to a homeowner about the necessity for repairs or to break or destroy a roof in order to secure a job. In discussing the need for repair work, salesmen offered homeowners several options, including advising the homeowner to contact his or her own roofer about effecting the repairs.

When a customer agreed to hire the Dennis E. Rodriguez Construction



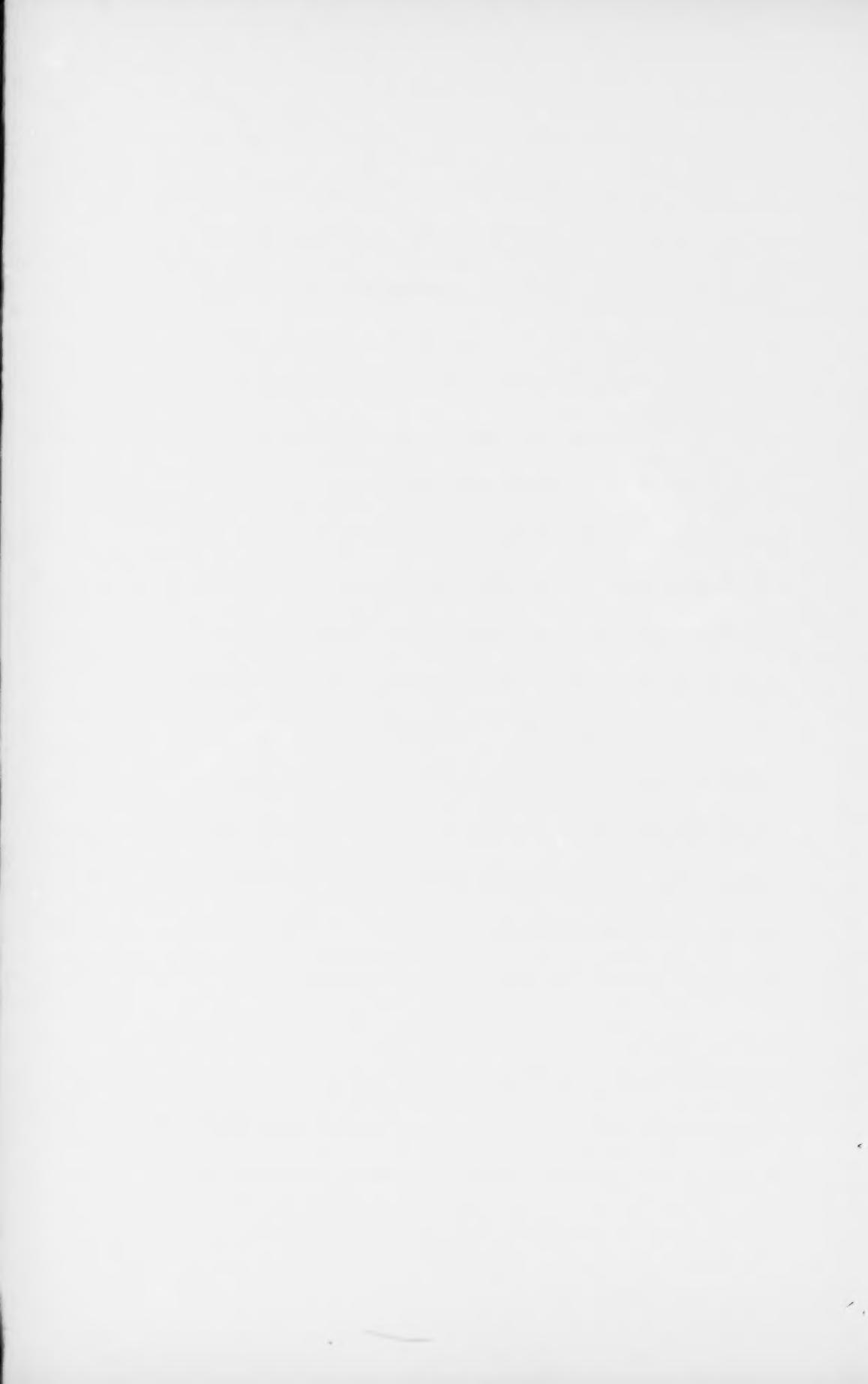
Company to do the repair work, a contract was drawn up and the specific work to be done was included in the contract. All contracts included the required notice that cancellation could be made within three days and contained the company's telephone number, which the salesperson underlined. Once the job was sold, Rodriguez contacted available subcontractors in an effort to begin work on the house as soon as possible. In the construction trade, this effort to promptly begin working on the repairs so as to show the customer that the company could perform the job, was for the purpose of dissuading the homeowner from cancelling the contract. This was known as "spiking the job".

FRANTA's responsibility ended when the job was sold. Supervision of the job was Rodriguez' concern. FRANTA was, however, always very insistent that



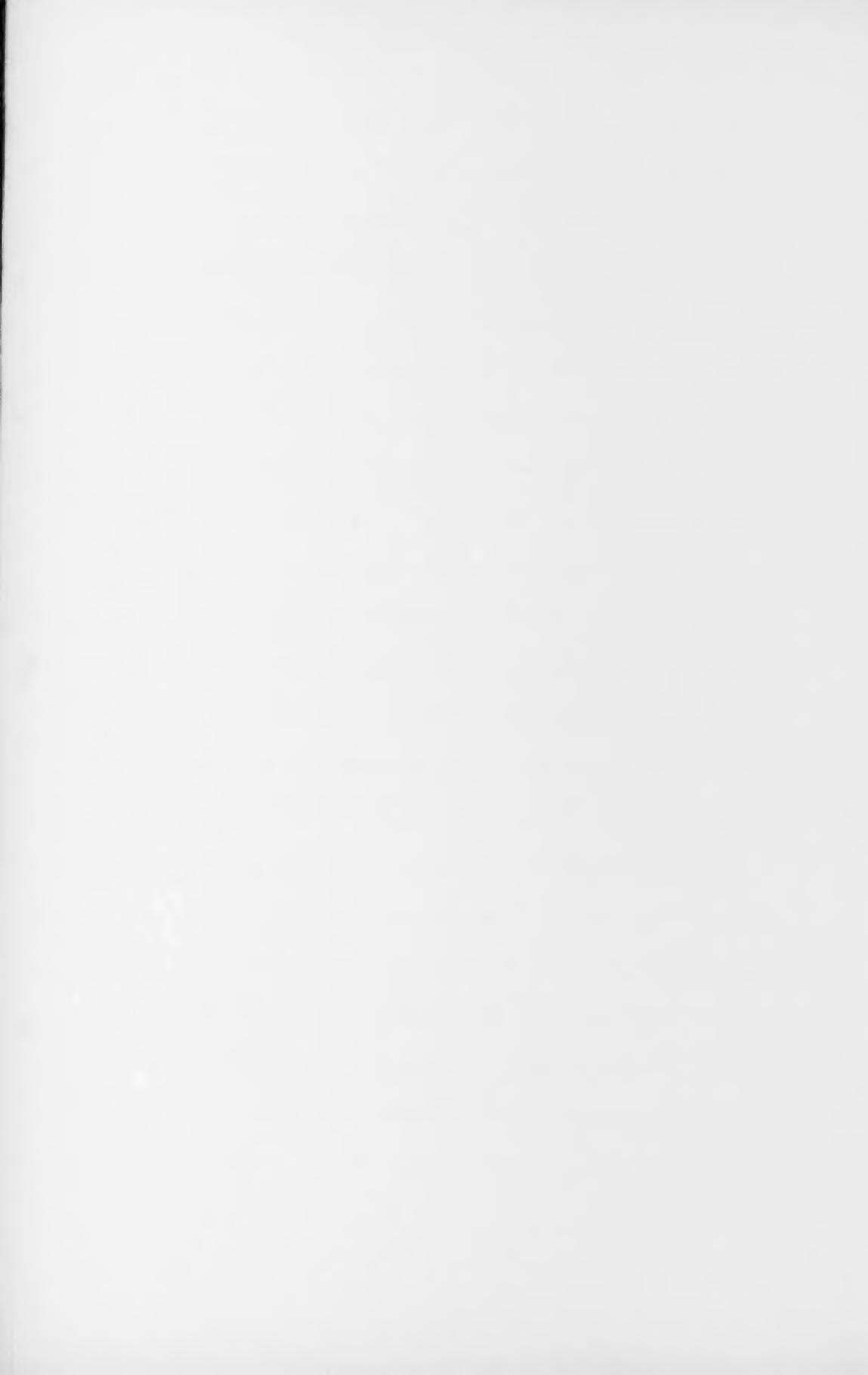
the workmen performed the repairs "according to the contract" and continually reminded Rodriguez to properly supervise the job. Whenever any customer had a complaint about repair work, Rodriguez sought to remedy the situation. To this extent, he responded to complaints by sending workmen to redo the work and make adjustments or by agreeing on a price reduction. Relatively few of the many jobs done experienced problems. Throughout the course of his business relationship with FRANTA, Rodriguez attempted to do proper roof repairs and never schemed to defraud or mislead customers. Rodriguez paid premium prices to his subcontractors in order to get premium work.

The actual work done on the roofs was admittedly of inferior quality. While extensive work was performed on every home, expert witnesses



disagreed as to whether all contract terms were satisfied. In some cases, homeowners complained to the company and received refunds. In other cases, homeowners were satisfied with the roofing work. In still other cases, homeowners complained to the Consumer Affairs Office. The prosecution theorized that FRANTA and other company employees misled and lied to the homeowners in attempting to convince the homeowners to agree to roof repairs. On every occasion that a contract was executed, however, the roofs were in need of some repair.

FRANTA earned a substantial amount of money as a result of being responsible for sales. During a ten month period, he received \$137,000 income. FRANTA was, however, responsible for resurrecting the financial health of the company, which was in disastrous

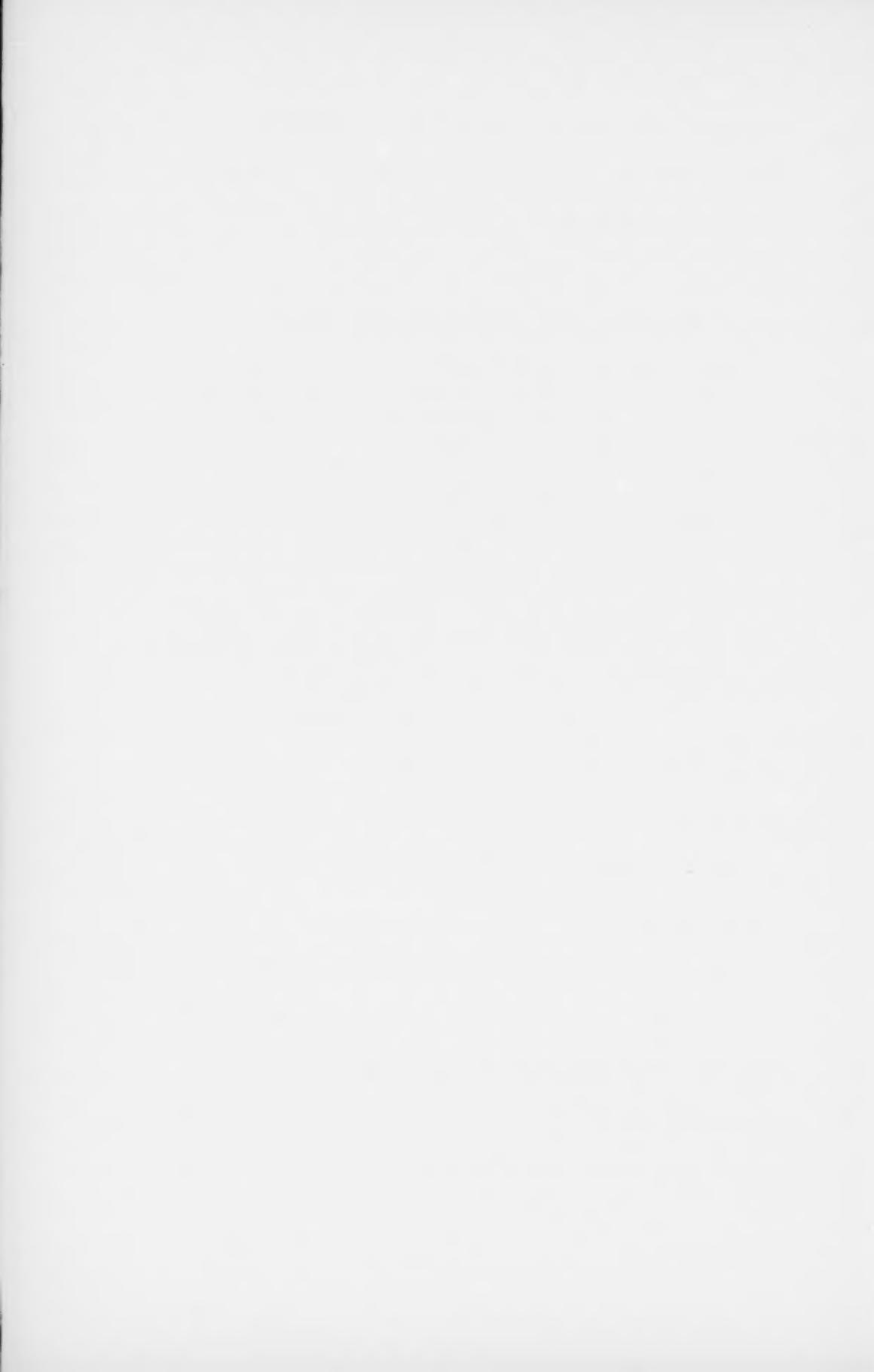


straits before his arrival. FRANTA was not, however, in control of the company or its finances.

REASONS FOR GRANTING THE WRIT

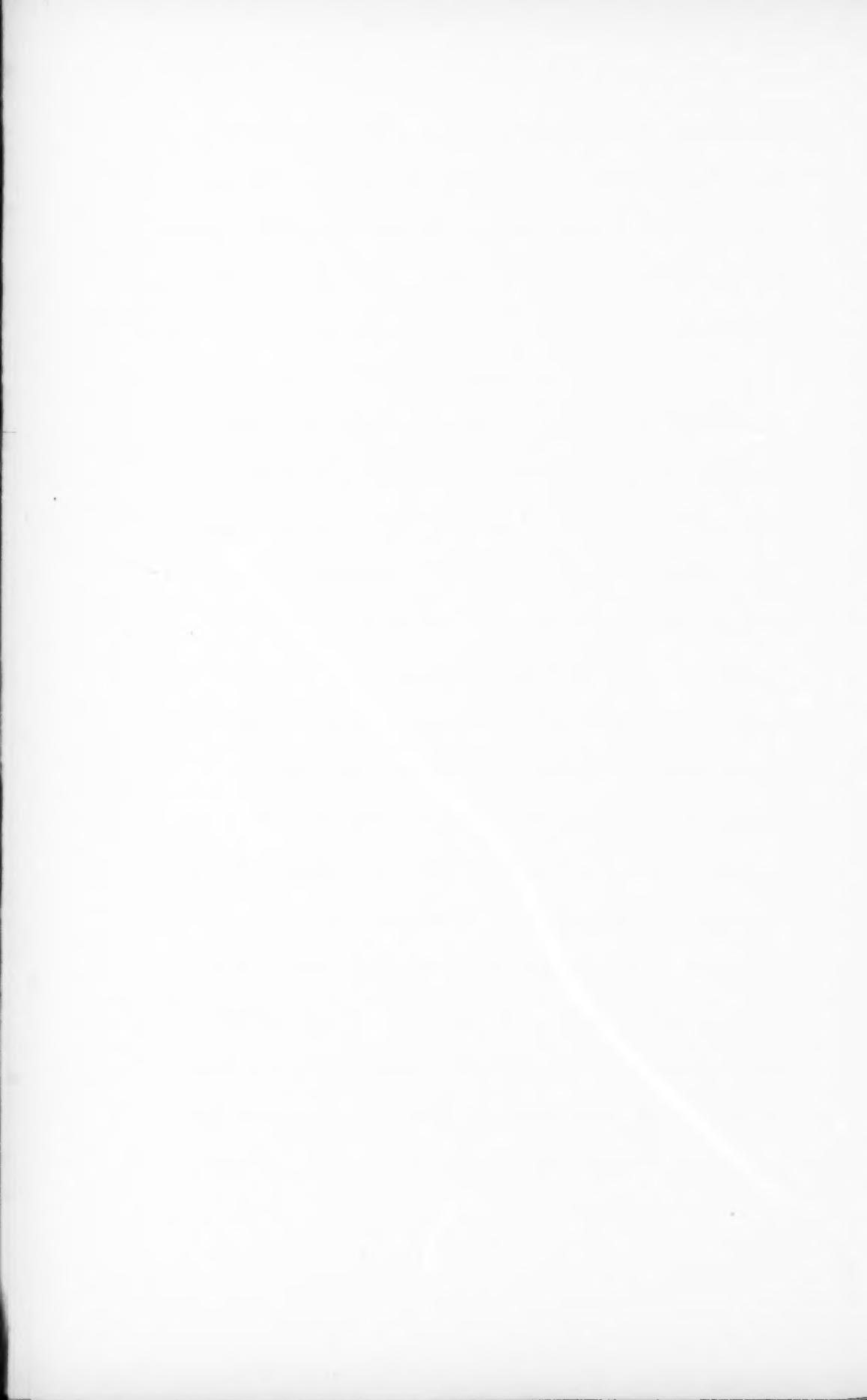
THE DECISION BELOW, AFFIRMING WITHOUT OPINION PETITIONER'S CONVICTIONS FOR THEFT AND ENGAGING IN A SCHEME TO DEFRAUD, IS CONTRARY TO LAW AND RESULTS IN A DEPRIVATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, WHERE THE EVIDENCE ESTABLISHED ONLY THAT PETITIONER WAS INVOLVED IN THE COMPETITIVE BUSINESS OF HOME REPAIR SOLICITATION, THAT HE ENGAGED IN LEGITIMATE SALES PUFFERY, BUT THAT HE DID NOT ACT TO DEFRAUD ANY HOME-OWNERS.

In all criminal cases, the prosecution has the responsibility of proving every element of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970). This burden is not dependent upon the status of the prosecuting authority, Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979) (due process requires same standard of proof in state



criminal proceedings), or the status of the defendant. In re Winship, supra (beyond a reasonable doubt burden is applicable in adult and juvenile prosecutions).

Yet, in the present case the State of Florida, through the decision of the Second District Court of Appeal, has effectively imposed an altogether new standard of criminal responsibility in situations where an individual is involved in the legitimate, but competitive, business of home improvement solicitations. That court has effectively held, by reason of its affirmance of the convictions, that if a salesperson's company does poor quality work, the salesperson could ultimately be found guilty of fraud and theft. This emerging standard of **strict liability** in the context of business crimes is completely erroneous and contrary to well estab-



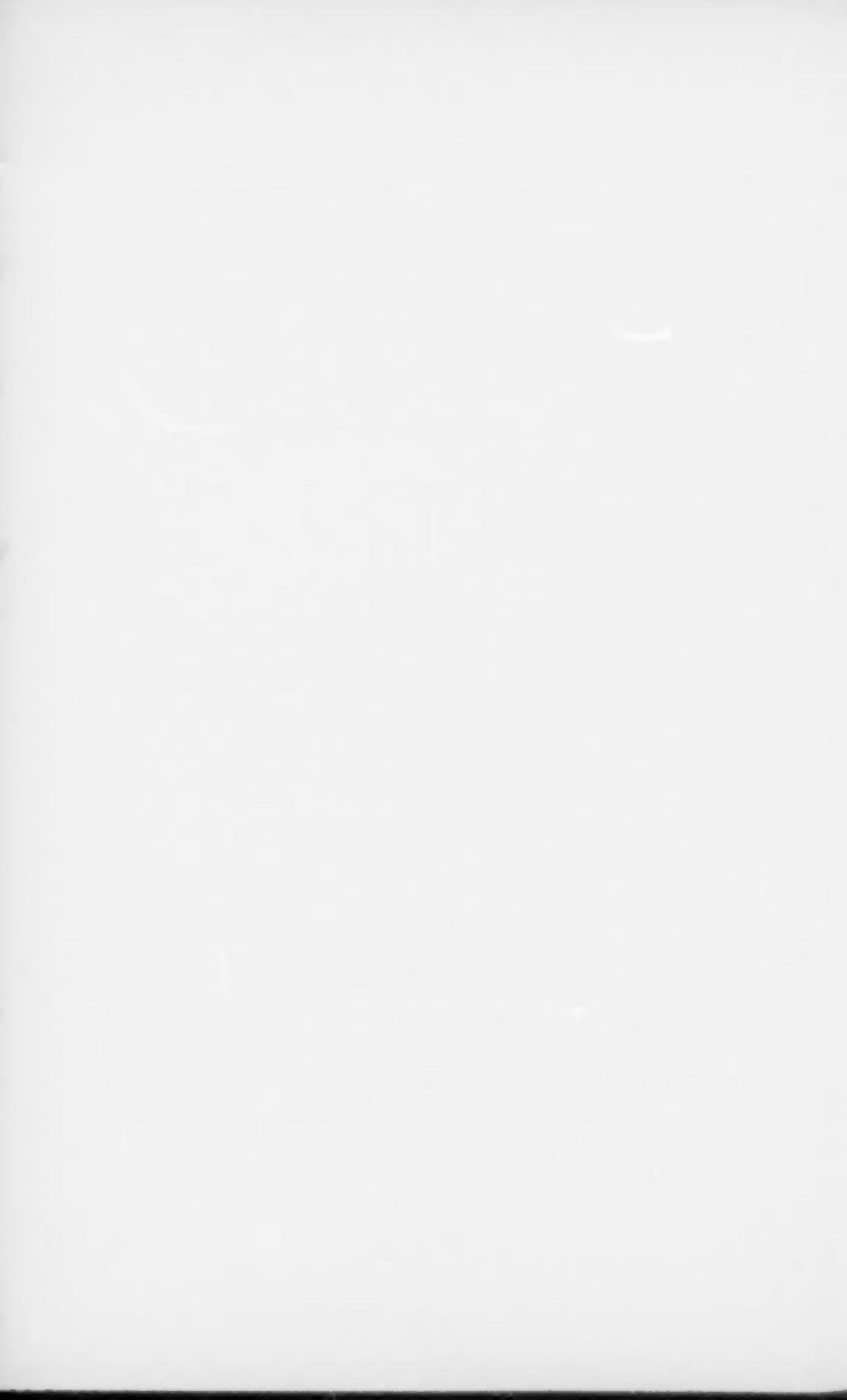
lished notions of criminal culpability. The conclusion of the appellate court ought to be reviewed by this Court for the very simple reason that if unchecked, this standard will impose liability upon every individual who, by reason of attempting to make an honest living in difficult economic times, supplies services or products which are not among the best the marketplace has to offer. Petitioner should not be made to suffer as a criminal because of the competitive nature of small businesses today.

The situation now presented to this Court is controlled by a substantial body of precedent which, unfortunately, was not applied to this case. The record of proceedings in this case demonstrates that numerous individuals, operating through a licensed construction company, endeavored to sell roof



repair services by way of home solicitations. The license holder, Dennis E. Rodriguez, was not very knowledgeable in roof repair aspects of the construction business, although he did evidence the required knowledge and experience needed to obtain his state contractor's license. Rodriguez, who was particularly inept in the business end of the construction trade, looked to the Petitioner to supply a steady source of business. Petitioner's expertise was in sales. He was known for his ability to persuade others to purchase the product he offered -- roof repairs -- at a fair and reasonable price. He made no pretense of participating in the nuts and bolts of the roof repair business.

The procedure utilized by the construction company was neither devious nor intended to take unfair advantage of homeowners. Homeowners contracted for

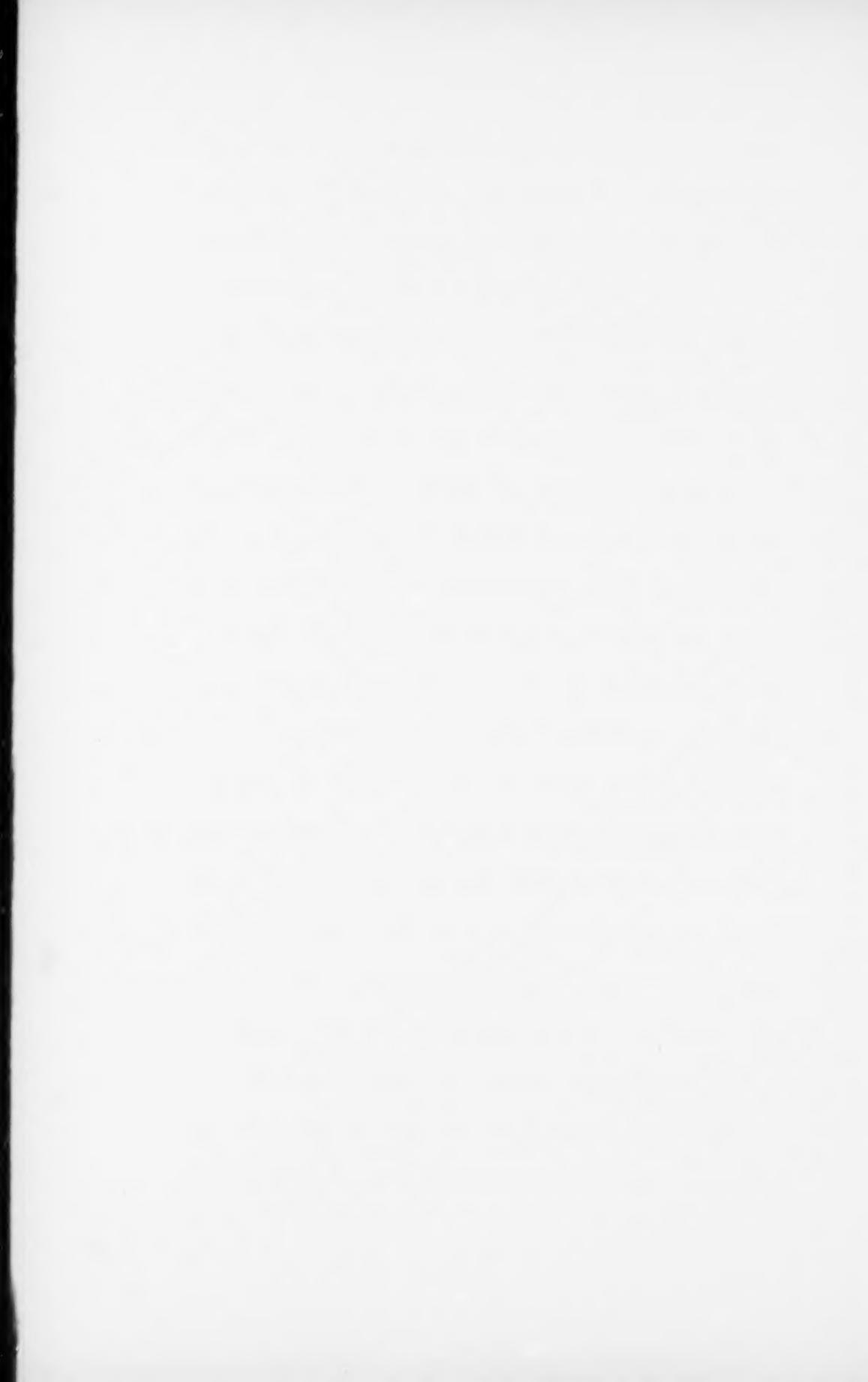


repairs to be made to their roofs. Petitioner did not "take the money and run"; rather, he and the other salesman described precisely what was to be done to the roof in a self-explanatory contract. Subcontractors, hired by Dennis Rodriguez, then went to work in accordance with the contract terms. Some of the work was substandard; other performance was satisfactory. However, every homeowner received at least partial compliance with the terms of their respective contract. At no time did the Petitioner or anyone else involved in the home repair activities intentionally perform acts or fail to do something for the purpose of unlawfully obtaining property.

In finding the evidence in this case sufficient to support the convictions, the Florida Second District failed to correctly comprehend the rele-



vant facts and consider the correct evidentiary standard. To put this case in its proper perspective, the activities involved herein are no different from the actions of a typical used car dealer. While such individuals are generally understood to utilize high pressure sales techniques, to engage in sales puffery and embellishments, and to emphasize the urgency of closing the sale as quickly as possible, it cannot be said that such individuals break the law by committing theft with each sale. Yet, that situation is directly analogous to this case. The Petitioner himself was never once shown to have lied to a homeowner. He did not promise anything that was not done. While he did embellish the quality of the repairs which would be made and the urgency for making the repairs, at no time did he mislead the customers with respect to



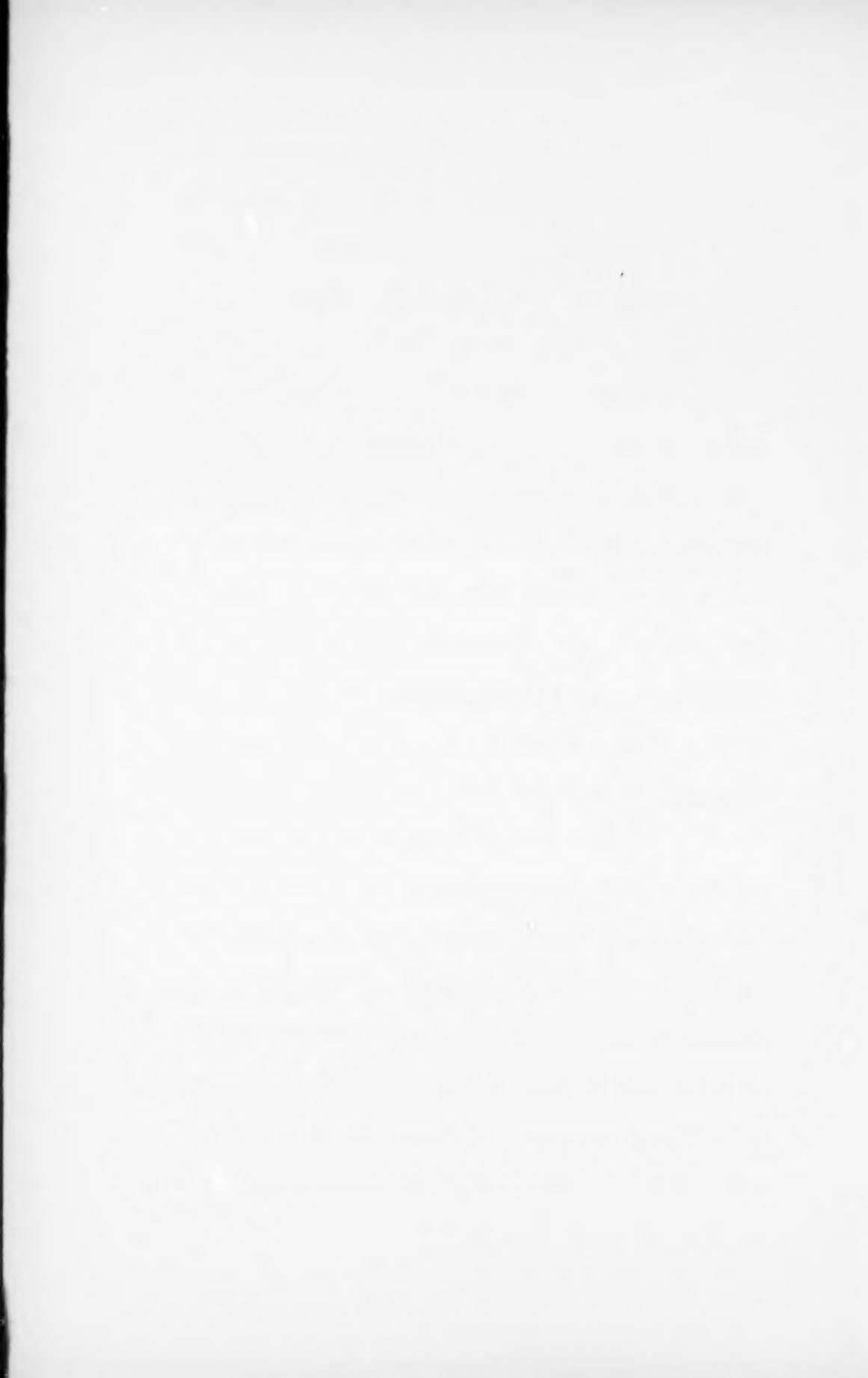
any material fact.

That court's perception of the case might be justified if the Petitioner did not detail the obligations of the construction company in the written contracts. The same might be true if he acted in a stealthy manner so as to trick individuals into taking some action which they did not understand. Yet, not a single customer testified at trial that the subcontractors did not do what they were obligated to do. The most that was said by the alleged victims and the other witnesses was that the subcontractors did not perform their responsibilities correctly. This proof did not establish that the Petitioner acted in a manner that conflicted with accepted standards of moral uprightness, fundamental honesty, fair play and right dealing. United States v. Shamy, 656 F.2d 951 (4th Cir. 1981). A scheme to



defraud is limited to that which is reasonably calculated to deceive persons of ordinary prudence and comprehension. United States v. Beitscher, 467 F.2d 269 (10th Cir. 1972). Within the context of the allegedly deceptive scheme involved herein, the appellate court totally failed to recognize the legal test that the evidence must prove the defendant's specific intent to defraud. E.g., United States v. Martin-Trigona, 684 F.2d 485 (7th Cir. 1982); United States v. Kreimer, 609 F.2d 126 (5th Cir. 1980).

The court's examination of the evidentiary sufficiency in this case should have been guided by the judicial precedent of United States v. Pearlstein, 576 F.2d 531 (3d Cir. 1978), a case which was totally ignored by the appellate court. There, various salesmen were charged with participating in a

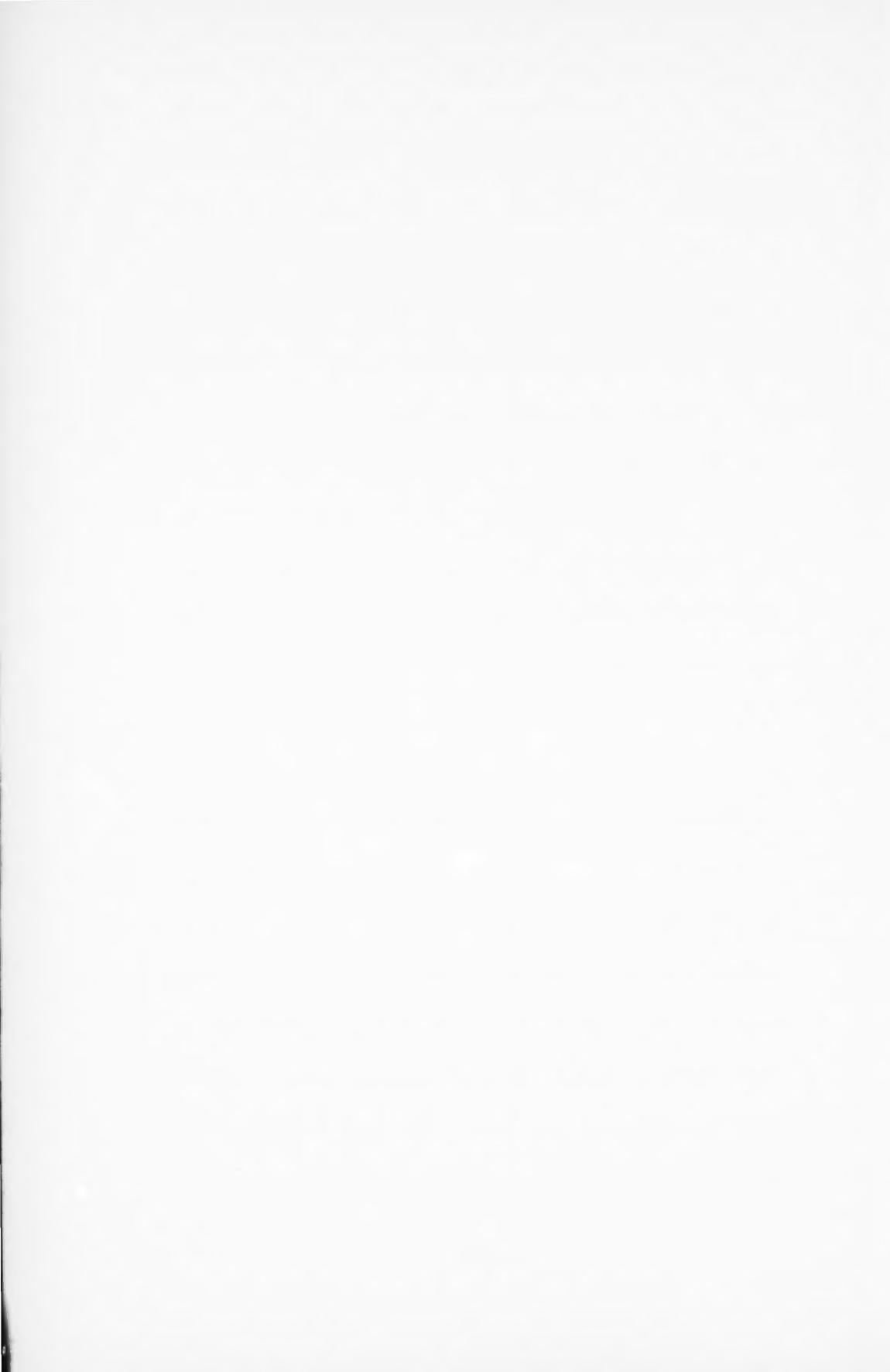


scheme to defraud involving the sale of distributorships for a direct-mail-marketing pen company. In the course of securing distributorships, by which the salesmen earned commissions, the sales personnel utilized a sales pitch which was replete with false and misleading statements. The salesmen, however, acted without knowledge of the false nature of the claims made, and instead merely functioned in the good faith belief that they were honestly relating facts in an effort to secure sales. The mail fraud convictions were, appropriately, reversed.

Petitioner's plight is similar. He never instructed salesmen to lie or mislead prospective customers or misrepresent any facts in order to induce the sale. He was always concerned about customer satisfaction, and insisted upon prompt resolution of consumer complaints.



Petitioner submits that this Court must review the standard of evidentiary sufficiency utilized by the Florida Second District Court of Appeal. That standard casts too broad a net and causes disharmony with respect to constitutional principles. Petitioner was denied his constitutional right to due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The danger present in this case is that businessmen, not bound by a rigid code of ethics and work standards, will be criminally punished because of the application of strict liability with respect to their endeavors. This case presents a critical opportunity for this Court to clarify this very important, but hazy, area of criminal law. This Court must issue its writ of certiorari to correct the injustice found herein.



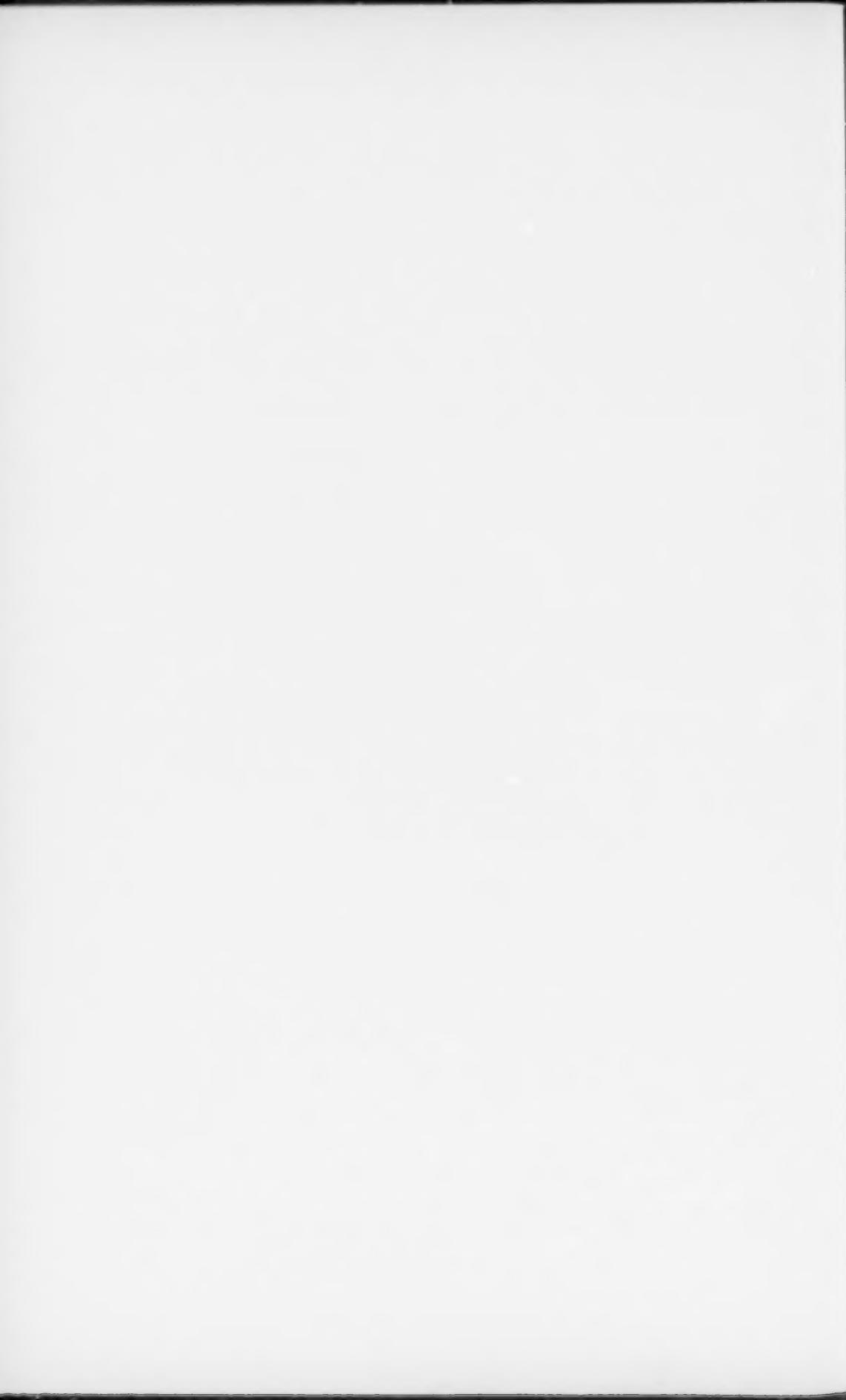
CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Florida Second District Court of Appeal.

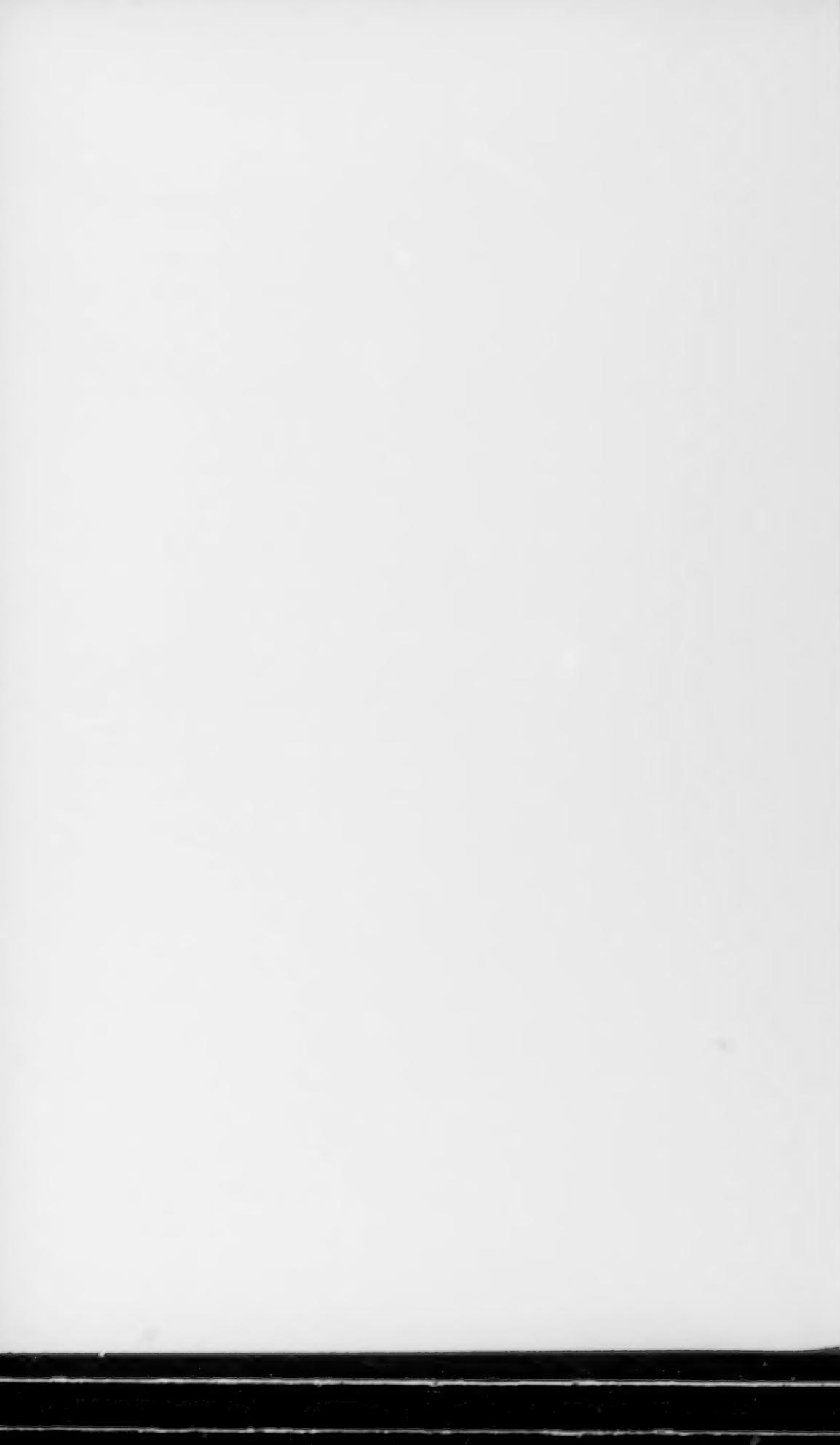
Respectfully submitted,

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## A P P E N D I X



NOT FINAL UNTIL TIME EXPIRES TO FILE  
REHEARING MOTION AND, IF FILED,  
DETERMINED.

IN THE DISTRICT COURT OF  
APPEAL OF FLORIDA  
SECOND DISTRICT  
CASE NO. 83-678

JOHN CHARLES FRANTA, :  
v. :  
STATE OF FLORIDA, :  
Appellant, :  
Appellee. :  
:

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Opinion filed April 11, 1984.

Appeal from the Circuit  
Court for Pinellas County;  
William L. Walker, Judge.

Donald L. Bierman and  
Benedict P. Kuehne of  
Bierman, Sonnett, Beiley,  
Shohat & Sale, P.A.,  
Miami, for Appellant.

Jim Smith, Attorney General,  
Tallahassee, and Davis G.  
Anderson, Jr., Assistant  
Attorney General, Tampa,  
for Appellee.

PER CURIAM.

Affirmed.

HOBSON, A.C.J., and CAMPBELL and  
SCHOONOVER, JJ., Concur.



IN THE SECOND DISTRICT COURT OF APPEAL,  
LAKELAND, FLORIDA  
May 18, 1984

Case No. 83-678

JOHN CHARLES FRANTA,	:
Appellant,	:
	:
V.	:
	:
STATE OF FLORIDA,	:
Appellee.	:
	:

Counsel for appellant having  
filed a motion for rehearing in the  
above-styled case, upon consideration,  
it is

ORDERED that said motion is  
hereby denied.

A TRUE COPY  
TEST:

CLERK DISTRICT COURT OF APPEAL  
SECOND DISTRICT

cc: Benedict P. Kuehne  
Attorney General